

MESSAGE NO: 3294114 MESSAGE DATE: 10/20/1992

MESSAGE STATUS: Active CATEGORY: Countervailing
TYPE: OTH-Other PUBLIC ☒ NON-PUBLIC ☐
SUB-TYPE:

FR CITE: FR FR CITE DATE:

REFERENCE 2198115
MESSAGE #
(s):

CASE #(s): C-122-816

EFFECTIVE DATE: COURT CASE #:

PERIOD OF REVIEW: TO

PERIOD COVERED: 07/06/1992 TO

Notice of Lifting of Suspension Date:

TO: { Directors Of Field Operations, Port Directors }

FROM: { Director AD/CVD & Revenue Policy & Programs }

RE: INSTRUCTIONS TO CLARIFY THE APPLICATION OF THE COUNTERVAILING DUTY ORDER ON SOFTWOOD LUMBER FROM CANADA (7/6/92) REFERS TO LAST MESSAGE)

MESSAGE NO: 3294114

DATE: 10 20 1992

CATEGORY: CVD

TYPE: OTH

REFERENCE: 2198115

REFERENCE DATE: 07 16 1992

CASES: C - 122 - 816

- -

- -

- -

- -

- -

PERIOD COVERED: 07 06 1992 TO

LIQ SUSPENSION DATE:

TO: REGIONAL DIRECTORS, COMMERCIAL OPERATIONS
DISTRICT DIRECTORS, AREA AND PORT DIRECTORS

FROM: DIRECTOR, IMPORT SPECIALIST DIVISION

RE: INSTRUCTIONS TO CLARIFY THE APPLICATION OF THE
COUNTERVAILING DUTY ORDER ON SOFTWOOD LUMBER FROM CANADA
(7/6/92) REFERS TO LAST MESSAGE)

IN RESPONSE TO NUMEROUS INQUIRIES FROM CUSTOMS FIELD OFFICES,
NATIONAL IMPORT SPECIALIST, PAUL GARRETO, HAS PREPARED THE
FOLLOWING CLARIFYING INSTRUCTIONS FOR USE IN CONNECTION
WITH THE COUNTERVAILING DUTY CASE, C122-816,
SOFTWOOD LUMBER FROM CANADA.

I. First Mill's FOB Price

1. Definition and interpretation

The First Mill's price is the FOB price charged by the manufacturing mill as the lumber exits that mill. This means that the first mill price does not include inland transportation charges to a second mill, wholesaler, U.S. customer, etc.

2. Appropriate Documentation Demonstrating First Mill's FOB Price in the following situations:

A. Canadian mill produces and sells direct to the U.S.

Acceptable documents would be the following:

- a. Commercial invoice,
- b. Proforma invoice with all required information.

For the above, all deductions must be clearly stated and identified.

B. Canadian mill produces, further manufactures, and sells direct to the U.S.

Acceptable documents would be the following:

- a. Commercial invoice,
- b. Proforma invoice with all required information.

{Deductions for further manufacturing must be clearly stated identifying the process and cost. (Planing is not considered further processing and cannot be deducted for CVD purposes.)}

For the above, all deductions to arrive at the first mill's FOB price must be clearly stated and identified.-

C. Canadian mill sells lumber to a second Canadian mill which further processes it prior to shipment to the U.S. (The second mil

is the seller.)

Acceptable documents would be the following:

- a. Commercial invoice from first mill;
- b. Proforma invoice from first mill identifying a specific order;
- c. The second mill must certify that the transaction with the first mill was made at arm's length.

(Processing done at the second mill must be clearly stated. Large or uncommon differences, for the industry, between first mill's price and appraised value must be explained at the time of entry.)

For the above, all deductions to arrive at the first mill's FOB price must be clearly stated and identified.-

D. Canadian mill sells to wholesalers or reload distribution centers in Canada. The wholesalers or reload distribution centers sell direct to the U.S.

Acceptable documents would be the following:

- a. Commercial invoice from first mill;
- b. Proforma invoice from first mill identifying a specific order;
- c. The wholesaler or reload\distribution center must certify that the transaction with the first mill was made at arm's length.
- d. Inland transportation costs between the mill and the wholesaler or reload\distribution center are deductible.

However, an inland transportation bill of lading or similar appropriate document is required to show actual inland freight expenses being deducted to arrive at the first mill's FOB price.

(Large or uncommon differences, for the industry, between first mill's price and appraised value must be explained at the time of entry summary.)

For the above, all deductions to arrive at the first mill's FOB price must be clearly stated and identified.-

3. Alternate Method to Demonstrate First Mill's FOB Price - Shipper's Declaration or Affidavit

If a shipper demonstrates to Customs a methodology to arrive at the first mill's FOB price which is sufficiently clear, follows generally accepted accounting principles, and follows the rules set by the CVD determination, Customs may accept a declaration or affidavit at the time of entry summary in support of the declared first mill's FOB price.

If a shipper wishes to use the above Declaration or Affidavit method in lieu of submitting the appropriate documents required under item 2 above, the SIR and/or the PIRP (no bypass) programs may be used to review the shipper's methodology.

When a Customs port has approved a methodology used by a shipper, the information should be transmitted to the NIS with a brief explanation.

The NIS will review and transmit the information to all ports to ensure a uniform treatment of shipper and eliminate a duplication of effort.

4. Claim for first mill's FOB price to calculate the CVD cash deposit

1. Must be based on appropriate documentation as discussed under item 2 and 3, above.
 2. The documentation must be presented at the time of entry summary.
 3. The appropriate documents are not bondable.
-
5. In the absence of the appropriate documents as discussed above, the CVD rate is to be assessed on the entered value.

NOTES:

1. Planing is not considered further processing for this CVD case.

If a second mill planes the lumber, the planing mill is considered to be the first mill for the purpose of calculating the "first mill's FOB price".

2. Any deduction for inland transportation costs to arrive at the first mill's FOB price must be based on actual inland freight expenses associated with the specific shipment being entered into the U.S.

3. Inland transportation costs are also deductible to arrive at the first mill's price when the original shipper to the reload center is a wholesaler rather than a mill. Satisfactory freight documentation must be provided.

II. Remanufactured Lumber

1. Planing is not considered further processing. If planing is done by the first mill, the first mill's FOB price must include the cost of planing.

2. If a second mill planes the lumber, the planing mill is considered to be the first mill for the purpose of calculating the "first mill's FOB price".

3. When lumber is remanufactured, a certain quantity is used as input to manufacture the quantity of the product being imported. In calculating the first mill's FOB price, the shipper has to use the total quantity of input lumber required to manufacture the quantity being imported, e.g.:

10,000 bd.ft. of lumber are used to produce 8,000 bd.ft. of the imported lumber product. The first mill's FOB price for the 10,000 bd.ft. is \$100 per M bd.ft. for a total cost of \$1,000 (10 M bd.ft. x \$100 = \$1,000).

The declared first mill's FOB price should be \$1000.

Information received by this office from various ports indicates that shippers may be using the imported quantity of lumber to calculate the "first mill's FOB price". In the above example, the result would be that the shipper would INCORRECTLY use 8,000 bd.ft. as follows:

8,000 bd.ft. x \$100 per M bd.ft. = \$800 which is an INCORRECT first mill's FOB \$ value.

The correct amount is calculated by using the original amount, i.e., 10,000 bd.ft. This results, as shown above, to a CORRECT declared first mill's FOB price of \$1,000.

NOTE: The reasoning for the above is that the remanufacturing mill requires 10,000 bd.ft. to produce the 8,000 bd.ft. of lumber product being imported. The 10,000 bd.ft. is the amount of lumber which benefitted from the subsidies.

III. Specific Factors Related to the First Mill's FOB Price

1. Submission or supplemental submission of documents to claim first mill's FOB price:

A. As stated in Headquarters Message No. 2198115 dated 7-16-92, appropriate documents in support of first mill's FOB price are not bondable documents. In the absence of the appropriate documents, you are to assess the CVD rate on the entered value.

B. If an importer submits supplemental documents after the date of Entry Summary regarding a claim for the first mill's FOB price, Customs should accept the documents. However, Customs will not take any action on the entries involved until the entries are liquidated.

2. Deductions from First Mill's FOB Price:

NOTE: When determining the first mill's FOB price, we are not appraising the merchandise.

We are determining a value to be used to calculate the CVD (cash deposit) according to the published Federal Register Notice.

A. Inland Freight:

If it is shown that inland freight is included, it may be deducted. This may be a freight charge to a second mill, wholesaler, or U.S. customer.

Note: Freight charges must be actual charges.

B. Cash Discounts:

There is no provision in this CVD case to allow a deduction for a cash discount in order to arrive at the first mill's FOB price. Therefore, no deductions are to be made for cash discounts.

C. Taxes (GTS):

The CVD determination has no provision to allow a deduction for taxes paid in Canada (refunded or not refunded) to calculate the first mill's FOB price. Therefore, no deductions are to be made for taxes (GTS).

NOTE: The issue of deducting Cash Discounts and Taxes is being reviewed by the Department of Commerce. If there is any change from the position that we have taken, you will be notified.

3. Price Averaging to Obtain the First Mill's FOB Price

In calculating a first mill's FOB price for the lumber used to manufacture the imported product, averaging prices paid to various first mills or to the same mill over a specific period of time is acceptable as it follows generally accepted accounting principles.

It is the responsibility of the shipper\importer to show Customs how the first mill's FOB price was arrived at and to have appropriate documents to support the claim.

IF THERE ARE ANY QUESTIONS REGARDING THIS MATTER BY CUSTOMS OFFICERS,
THEY SHOULD CONTACT THE THE IMPORT SPECIALIST DIVISION, OTHER AGENCY BRANCH, VIA EMAIL ATTRIBUTE "HQ OAB".

THERE ARE NO RESTRICTIONS ON THE RELEASE OF THIS INFORMATION.

\s\

William J. Luebker

Company Details

*Party Indicator Value:

I = Importer, M = Manufacturer, E = Exporter, S = Sold To Party